

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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NEW YORK COMMERCIAL BANK,

Plaintiff,

- against -

Case No. 12-Civ-7693 (LTS) (FM)

PAUL J. PULLO and GENE V. PULLO,

Defendants.
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**DECLARATION IN SUPPORT OF DEFENDANTS' MOTION
TO TRANSFER VENUE TO THE EASTERN DISTRICT OF NEW YORK**

Lon J. Seidman, pursuant to 28 U.S.C. §1746, declares under penalty of perjury as follows:

1. I am a member of SilvermanAcampora LLP, attorneys for defendants Paul J. Pullo and Gene V. Pullo (the "Defendants"). I am familiar with these proceedings based on my review of the documents referenced herein, and the public record dockets relating to this civil action, and respectfully submit this Declaration in support of the Defendants' motion (the "Motion") to transfer venue of the above-captioned action (the "Action") to the United States District Court for the Eastern District of New York pursuant to 28 U.S.C. § 1404(a).

2. On October 2, 2012, plaintiff New York Commercial Bank (the "Plaintiff") commenced the Action in the Supreme Court of the State of New York, New York County (Index No. 653452/2012) by filing a Summons and a Notice of Motion for Summary Judgment in Lieu of Complaint pursuant to Civil Practice Law and Rules §3213.

3. On October 12, 2012, the Defendants removed the Action to this Court pursuant to 28 U.S.C. §§1334(b) and 1452(a), and Rules 9011 and 9027(a) of the Federal Rules of Bankruptcy Procedure. Annexed hereto as Exhibit A is a true and correct copy of the Notice of Removal filed by the Defendants, including the exhibits thereto.

4. Removal of the Action was appropriate because the Action is "related to" a

pending bankruptcy case.

5. Specifically, on September 27, 2012, Metro Fuel Oil Corp. and its debtor affiliates (collectively, the "Debtors"), filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code in the United States Bankruptcy Court for the Eastern District of New York (the "EDNY Bankruptcy Court"). On September 28, 2012, the EDNY Bankruptcy Court entered an order authorizing the joint administration of the Debtors' bankruptcy cases (ECF Doc. No. 29).

6. The Debtors' jointly administered bankruptcy cases have been assigned Case No. 12-46913, and are pending before the Honorable Elizabeth S. Stong, United States Bankruptcy Judge (the "Bankruptcy Court").

7. The Defendants are majority shareholders of Debtor Metro Fuel Oil Corp. and Debtor Metro Terminals Corp., and the sole members of Debtor Metro Terminals of Long Island, LLC (the "Borrower Debtors"), and operate, manage and otherwise control the operations of the Borrower Debtors.

8. The Borrower Debtors are indebted to Plaintiff and Valley National Bank pursuant to the Third Amended and Restated Accounts Financing Agreement, dated May 4, 2012 (the "Bank Debt").

9. The Defendants personally guaranteed the Borrower Debtors' obligations to the Plaintiff with respect to the Bank Debt. In addition, the Bank Debt is guaranteed by Debtors Apollo Petroleum Transport, LLC, Kings Land Realty, Inc., Metro Biofuels LLC, Metro Energy Group LLC, and Metro Plumbing Services Corp.

10. The Plaintiff alleges in the Action that the Defendants personally guaranteed payment of certain indebtedness of the Borrower Debtors, and that because the Borrower Debtors are allegedly in default of certain loan agreements, the Defendants are liable for nonpayment under the terms of those documents.

11. The Defendants removed this Action to this Court on October 15, 2012.

12. By this motion, the Defendants seek to transfer venue of the Action to the Eastern District of New York, so that it may be referred to the Bankruptcy Court that has jurisdiction over the Debtors' bankruptcy cases pursuant to the Order of the United States District Court for the Eastern District of New York, dated August 28, 1986 (Weinstein, C.J.).

13. The transfer of venue of this Action to the Eastern District of New York is appropriate pursuant to 28 U.S.C. § 1404(a).

14. Accordingly, it is respectfully requested that the Motion be granted.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 15, 2012.

/s/ Lon J. Seidman
Lon J. Seidman